

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL JANSEN,

Plaintiff,

v.

FNU HERNANDEZ; FNU MONTOYO,

Defendants.

Case No. 1:21-cv-01532-HBK (PC)

ORDER CONSTRUING LETTER AS  
NOTICE OF VOLUNTARY DISMISSAL  
UNDER FED. R. CIV. P. 41 AND  
GRANTING MOTION TO RETURN FILING  
FEE

(Doc. No. 8)

ORDER VACATING ORDER GRANTING  
IFP, DIRECTING CLERK OF COURT TO  
RETURN ANY FUNDS RECEIVED FOR  
FILING FEE AND PROVIDING NOTICE TO  
CDCR TO STOP ANY FUTURE  
WITHDRAWALS

(Doc. No. 6)

Pending before the Court is Plaintiff's letter to the clerk dated July 19, 2022 advising the Clerk that Plaintiff wishes to cancel his "filing" incorporating a request to have his "filing fee be returned." (Doc. No. 8). Plaintiff explains that he has elected to proceed with his case in the state court. (*Id.*). The Court construes the letter to the Clerk as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41.

1 Plaintiff, a state prisoner, initiated this action by filing a civil rights complaint under 42  
2 U.S.C. § 1983 on October 12, 2021. (Doc. No. 1). After transfer to this Court, the Court granted  
3 Plaintiff's motion to proceed *in forma pauperis* on October 19, 2021. (Doc. No. 6). As of the  
4 date of this order, the Court has not conducted a screening of the complaint under 28 U.S.C. §  
5 1915A. Based on Plaintiff's notice, this action is terminated by operation of law without further  
6 order from the Court. Fed. R. Civ. P. 41(a)(1)(A)(i). Because the Court has not yet screened the  
7 complaint, ***as a one-time courtesy***, the Court will vacate its order granting Plaintiff *in forma*  
8 *pauperis* status and direct any filing fee paid to date to be returned to Plaintiff.

9 Accordingly, it is **ORDERED**:

10 1. The Clerk of Court is directed CLOSE this case to reflect Plaintiff's voluntary  
11 dismissal under Fed. R. Civ. P. 41.

12 2. The Court GRANTS Plaintiff's motion to return filing fee incorporated in his notice  
13 (Doc. No. 8) and VACATES its October 19, 2021 Order granting Plaintiff's motion to proceed *in*  
14 *forma pauperis* (Doc. No. 6). **The Director of CDCR is no longer required to collect any**  
15 **payments from Plaintiff's prison trust account for this case.**

16 3. The Clerk of Court is directed to refund all amounts collected as payment toward the  
17 filing fee for this case, including the \$104.00 received to date.

18 4. The Clerk of Court is further directed to provide a copy of this Order on (1) the  
19 Director of the California Department of Corrections via the Court's electronic case filing system  
20 (CM-ECF) and (2) the Financial Department, U.S. District Court, Eastern District of California,  
21 Sacramento Division.

22  
23 Dated: July 26, 2022

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE